IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRIMINAL MISC.NO. 40992 M of 2006

DATE OF DECISION: JANUARY 30, 2007

Hoshiar Singh

.....Petitioner

VERSUS

State of Haryana and another

....Respondents

CORAM:- HON'BLE MR.JUSTICE RANJIT SINGH

1. **Whether Reporters of local papers may be allowed to see the judgement?**
2. **To be referred to the Reporters or not?**
3. **Whether the judgment should be reported in the Digest?**

PRESENT: Mr. G. S. Gandhi, Advocate,
for the petitioner.

Mr. Vikas Chaudhary, AAG, Haryana,
for the State.

Mr. Rajesh Lamba, Advocate,
for respondent No.2.

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RANJIT SINGH, J.

The petitioner seeks quashing of FIR No.302 dated 19.10.2005 registered under Sections 304A, 201, 120-B IPC at Police Station Manesar, District Gurgaon. Further prayer is for quashing the report under Section 173 Cr.P.C. as well as the subsequent proceedings.

One Dhanpat was employed as a Mason with Sh.Vikram, a Contractor. On 9.10.2005, said Dhanpat was sent by the Contractor to the site for the purpose of construction work. At the sight, a wall fell on Dhanpat, leading

to serious injuries to him. He was initially taken to Janta Hospital, Manesar and then shifted to Ayushman Hospital, Gurgaon because of his serious condition. He, however, breathed his last at the said hospital. The complainant, who is sister of the wife of the deceased, had gone to the hospital on being informed about the incident. After death of the deceased, they returned to the village to make arrangement for funeral. Mohan Lal Josh brought the dead body to the village without informing police. No post mortem was done on the body. The body of deceased was cremated in the village in the presence of family members. The petitioner was present at that time. No grievance was raised at all by anyone. A compromise statedly was effected between the parties and a sum of Rs.40,000/- was paid by Vikram, Contractor. Later, respondent No.2, son of the deceased, lodged a report with the police, levelling unfounded allegations and by making a concocted story just to get some more compensation from the contractor. The petitioner, who is brother-in-law of the deceased, was also roped in because of the reason that he could not get compensation enhanced from the contractor.

The allegations against the petitioner are that he alongwith others had brought the body of the deceased and had informed the complainant that post mortem had been got conducted. It is also alleged that he did not allow the family members to touch the body. He is accordingly being proceeded against. The petitioner claims that this amounts to an abuse and misuse of process of Court and has filed this petition for quashing of the FIR on the ground that no offence under Section 304-A for any rash or negligent act on his part would be made out, even if all the allegations are taken to be

true.

On notice being issued, reply has been filed on behalf of the State. In the reply, it has been stated that challan in this case has been filed after completing the investigation against the petitioner and other accused. It is further stated that the petitioner would be at liberty to raise all these pleas at the time of framing of charge in this case.

Heard counsel for the parties.

The petitioner is being prosecuted for an offence under Section 304A, which punishes a causing of death by doing any rash or negligent act. Admittedly, deceased in this case had died on account of a wall having fallen on him when he was sent for doing some construction work by Vikram, Contractor. How the petitioner would be responsible for this accident or death is really not understood? Even otherwise, it is a case of pure and simple accident. Accident is otherwise a complete defence in case of an allegation under Section 304A IPC. The son of the deceased at whose instance this FIR was lodged, also was not witness to this incident and as such, he is in no position to give any evidence to substantiate any allegation which could reveal any culpability of the petitioner for rash or negligent conduct. Petitioner, who is closely related to the complainant, cannot be considered under any obligation to inform the police about this incident. He is one of the persons who had brought the dead body. It can not be assumed that the family members had cremated the body without touching the same as is being made out. Apparently, the complainant wanted the petitioner to get some enhanced compensation from the contractor

and so he has been named. Persons accompanying him and similarly situated have not been proceeded against. Accordingly, even if the contents of the FIR are taken to be true, then also no offence under Section 304-A or 201 IPC would be made out against the petitioner. The present FIR against the petitioner and any subsequent proceedings held against him so far as such, cannot be sustained.

The present petition is accordingly allowed. The FIR and the proceedings arising therefrom against the petitioner are hereby quashed. It is made clear that the prosecution would be at liberty to proceed against any other person on the basis of allegations made in the present FIR.

January 30, 2007 **(RANJIT SINGH)**
khurmi **JUDGE**